

REMARKS

Claims 1-4 and 25-53 are pending in this application. Claims 5-24 have been cancelled. Claims 1, 2, 38, 43-45, 51 and 53 have been rejected under 35 U.S.C. §102(e). Claims 3, 4, 25-37, 39-42, 46-50 and 52 are allowed. Claims 1 and 43 have been amended in this response. New claim 54 has been added.

Rejections under 35 U.S.C. § 102(e)

Claims 1, 2, 38, 43-45, 51 and 53 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,057,165 to Mansour (hereinafter “Mansour”). Applicants traverse this rejection.

Independent Claims 1 and 43

A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described in a single prior art reference. MPEP §2131. Applicants believe that Mansour does not anticipate the present invention because it does not set forth at least one of the claim elements of independent claims 1 and 43. In particular, Mansour does not disclose, teach or suggest the claim limitation of “*preventing fluid flow across the chamber and carrier interface*”. This limitation is not found in Mansour and therefore, Mansour does not anticipate independent claims 1 and 43.

In contrast, fluid flows out of the reservoir in Mansour through a system of porous and flow control layers. “The assay composite 40 is comprised of a porous membrane 41...” Mansour, col. 11, lines 7-8. The porosity of the composite is discussed in Mansour at col. 11, lines 5-17. “Adjacent to the lower surface of the porous membrane 41 is a flow control layer 42 which is preferably formed from a unidirectional flow-controlling polycarbonate membrane having a pore size of 0.6 micron.” Mansour, col. 11, lines 14-17. “Immediately underneath the flow control layer is a porous spacer layer 42 which generally has a pore size greater than the pore size of flow controlling layer 42.” Mansour, col. 11, lines 18-20. “Immediately underneath the porous spacer layer 43 is absorptive layer 44.” Mansour, col. 11, lines 22-23.

Clearly, in Mansour the reservoir is not sealed and fluid is allowed to flow through the various porous and flow-control layers. Actually, there is nothing even beyond the absorptive layers to further contain fluid flow within the reservoir at that end. In fact, spaces are provided to ventilate the assay composite 40. See Mansour at col. 11, lines 46-50 (“The cover 46 is supported over porous membrane 41 by teeth-like projections 49 extending upward from the sides of the base 45. The projections 49 are of sufficient height to provide air spaces 50 which provide for ventilation of the sides of the assay composite 40.”). Mansour’s device peculiarly ventilates the assay composite. ***In such a construction, fluid flows into, through and past the “sample” and even capably beyond the “sample” and various other porous and absorptive layers and through the spaces 50 in Mansour.*** Therefore, Mansour is quite different from applicants’ invention as claimed and not anticipated for this reason.

To further emphasize this fluid flow from the reservoir at the end where the sample is located in Mansour, applicants refer the Office to col. 12, lines 2-7 of Mansour which reads as follows:

A test sample is applied to the test area 60 through delivery device 10 whereby the sample contacts the binder in test area 60, with the sample flowing through the assay composite to the absorbent layer 44. The analyte present in the sample will become specifically bound to the binder in area 60.

Also, at col. 12, lines 8-11, Mansour states:

Thereafter, tracer is applied to the test area 60 through the delivery device 10. The tracer becomes bound to the analyte, and any unbound portion flows through to the absorbent layer 44.

And, at col. 5, lines 18-25, Mansour states:

In addition, since the assay composite is employed in a manner such that the assay reagents flow through its layers, the porous membrane has a pore size which is greater than the size of the particulate label...

And, again at col. 12, lines 28-29, Mansour states:

...with sample flowing through to the absorbent layer 44.

In Mansour, sample flows out of the reservoir and through the composite of layers. The carrier does not prevent fluid flow across the carrier and chamber interface. Therefore, Mansour does not anticipate the present invention as claimed. For this reason, independent claims 1 and 43 and their respective dependent claims are in a condition for allowance.

Dependent claims 2 and 44

A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described in a single prior art reference. MPEP §2131. Applicants believe that Mansour does not anticipate the present invention because it does not set forth at least one of the claim elements of dependent claims 2 and 44. In particular, Mansour does not disclose, teach or suggest the claim limitation of “*extraction chamber*”. The term extraction is not found in Mansour. Because this limitation and other limitations incorporated from their respective independent claims are not found in Mansour, Mansour does not anticipate dependent claims 2 and 44.

Dependent claim 51

A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described in a single prior art reference. MPEP §2131. Applicants believe that Mansour does not anticipate the present invention because it does not set forth at least one of the claim elements of dependent 51. In particular, Mansour does not disclose, teach or suggest the claim limitation of a “*fluidic circuit*”. The term “fluidic circuit” is not found in Mansour. Because this limitation and other limitations incorporated from its independent claim, is not found in Mansour, Mansour does not anticipate dependent claims 51.

Finality of Office Action

The Office has marked the status of the office action as being “FINAL”. Applicants believe that this is incorrect and the finality of the office action is believed to be inappropriate. The MPEP at §706.07(a) states that:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by the applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

See also, MPEP §609(III)(B)(2)(a)(i) & (ii).

The finality of the office action is inappropriate because the Office introduced a new ground of rejection that was not based on information submitted in an information disclosure statement. The Office uses Mansour in making its rejections in the present office action. Mansour was not cited by the Office or by the applicants in an information disclosure statement and a new ground of rejection is based on material that was not submitted in an information disclosure statement or previously cited by the Office. The Office apparently conducted an additional search and uncovered Mansour and used it to reject claims. For these reasons, applicants respectfully request withdrawal of the finality of the office action.

In view of the foregoing remarks, applicants respectfully submit that the application is in a condition for allowance, and action toward that end is earnestly solicited. The Office is invited to contact the applicant's representative at the number below to facilitate prosecution of this application.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time.

Respectfully submitted,

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